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July 11, 2014

Via e-mail (industrialstormwatercomments@ecy.wa.gov)

Jeff Killelea

Department of Ecology

P.O. Box 47600

Olympia, WA 98504

Re: Comments on May 2014 draft Industrial Stormwater General Permit

Dear Mr. Killelea:

These comments are submitted on behalf of Puget Soundkeeper Alliance, Columbia Riverkeeper, Spokane Riverkeeper, Washington Environmental Council, Waste Action Project, and RE Sources for Sustainable Communities/North Sound Baykeeper (collectively, "Commenters"). As you know, several of these organizations have been very actively involved in the development, implementation, and enforcement of the Industrial Stormwater General Permit ("ISGP") since 2000, and have inspected and reviewed compliance issues in detail at dozens of permittee facilities in this period. Because of the key role of stormwater discharges in Puget Sound and Washington State pollution issues, Commenters consider regulation of industrial stormwater to be of great importance and public interest. We appreciate the attention and work that Ecology has put into the ISGP over the past dozen or so years as our experience with permittees shows that the prescriptive approach and the monitoring/adaptive management scheme of the ISGP is in many cases working to ensure that stormwater pollution controls at industrial facilities are adequate to protect against adverse water quality impacts. However, there are particular weaknesses and loopholes in the ISGP that impede its effectiveness at some permittee sites, and Commenters continue to believe that an approach based on requirements to meet numeric effluent limitations would be superior overall.

Additionally, in our work to enforce the terms of the ISGP through citizen suits, we have noted problems resulting from an inadequate inspection and regulatory regime implemented by Ecology. These problems include the lack of inspections for years at some permittee facilities, including large facilities that have reported consistent and grossly elevated pollutant levels (e.g., SSA Terminal 18 in Seattle went uninspected for seven years while consistently reporting exceedences of zinc and other benchmarks and fecal coliform concentrations orders of magnitude above fecal coliform numeric effluent limitations), inspection reports that gloss over or ignore significant compliance issues, and instructions or advice to permittees that is inconsistent with ISGP requirements. We have noted these problems across western Washington, though they seem most common in the non-Duwamish areas of King and Snohomish Counties. This is not necessarily an issue about the draft ISGP and may be adequately addressed by additional training or guidance to Ecology inspectors,

but it leads Commenters to heightened concern over portions of the draft ISGP that are unclear or susceptible to multiple interpretations.

COMMENTS BY DRAFT ISGP CONDITION

Condition S1

1. Ecology has broad discretion under S1.B. of this permit to require permit coverage for a facility it determines to be a “significant contributor of pollutants to waters of the state” which “may reasonably be expected to cause a violation of any water quality standard”, and “conducts industrial activity, or has a SIC code, with stormwater characteristics similar to any industrial activity or SIC code listed in Table 1 in S1.A1” (page 8). This provision (known as residual authority) allows Ecology to require permit coverage for harmful industrial stormwater discharges from facilities not specifically called out in Table 1 in S1.A1. However, Commenters are aware that Ecology is severely limited in its resources to require discretionary coverage. In the past five years, how many times has Ecology required discretionary coverage under this permit? Commenters’s sense is that this provision is sorely underutilized. The piecemeal approach is not working.

Meanwhile, stormwater pollution remains the number one source of toxic pollution to Puget Sound. Streams draining commercial/industrial land exhibit the highest concentrations of contaminants, often exceeding water quality and human health criteria. The 2011 Puget Sound Toxic Loading Study report concluded that “given the relatively large concentrations being exported from these areas and the relatively small geographic areas they occupy, effective management tools are generally available to control the releases of contaminants”. However, even with this knowledge, implementation remains very low. Adding additional categories of industrial sectors to this permit is necessary and appropriate to curtail industrial stormwater pollution.

There are strong policy reasons to equalize permit coverage. It is all too common to see neighboring industrial sites that, despite similar stormwater characteristics, are subject to incongruent regulatory requirements simply because one site is of an industrial class listed in Table 1 in S1.A1 while the other is not (yet). Unfairness of this flavor within the regulated community undermines Ecology’s NPDES permit program by fueling unproductive resentments, which waste energy and resources that would be better spent on stormwater pollution control. A successful program requires a level playing field.

Identified below are three discreet, well-defined categories of industry that should require coverage under this permit. Each of these industrial sectors fits the characteristics identified in S1.B. Facilities belonging these sectors would almost certainly be required to obtain permit coverage if they were closely scrutinized under the S1.B. factors. However, Ecology has neither the time nor resources to engage in such scrutiny. In the interest of efficiency, certainty, fairness and the protection of surface water quality, the following groups should be added to Table 1 in S1.A1:

A. Heavy Construction Equipment Maintenance, Rental and Repair

Heavy construction equipment requires the use of fuel, oil, antifreeze, hydraulic fluids, and other harmful pollutants. Facilities that maintain, rent and repair heavy construction equipment and machinery engage in sharpening, grinding, welding, lubing, painting, fueling, storage, display and transport, amongst other activities. As a result of these activities, these sites pose inherent risks of pollutant spills, leaks and residual discharges from the equipment to ground surfaces, resulting in a high risk of contaminated stormwater discharges to surface water. Heavy Construction Equipment Rental (SIC 7353) should be added to Table 1 in S1.A1.

B. Marine Construction

Marine construction facilities engage in the design, construction, repair, salvage and demolition of marine structures. These sites include shore side construction staging areas for pile driving operations, bulkhead work, and marine salvage and demolition projects as well as facilities hosting the construction of docks and other marine structures. Marine construction activities require substantial volumes of equipment, including specialty heavy marine and excavation gear, and often require high concentrations of materials in large paved storage yards in close proximity to surface waterways.

Ecology has discretion to cover marine construction facilities under the Construction Stormwater General Permit (S1.B.1.b. page 5, Dec 1, 2010). But, has it ever done so?

The following SIC codes should be added to Table 1 in S1.A1 of the ISGP: Piles, foundations & marine construction (SIC 2491) and Marine construction, general contractors (SIC 1629).

C. Auto Repair Shops

As the name suggests, auto repair businesses fix cars, trucks and other motorized vehicles. And, these facilities are ubiquitous in Washington state – with 62 separate entities accredited by the Better Business Bureau in the City of Seattle alone. Auto repair shops deal in high volumes of oil and grease, heavy metals and toxic chemicals and parts, including petroleum-based solvents, paints and paint thinners, antifreeze, scrap metal, batteries, lubricants and oil filters, fuels of various types, acids and alkalis, and contaminated rags and towels. Auto repair facilities range in type and specialty, with most utilizing some sort of outdoor work area and/or outdoor material storage. These sites are numerous, collectively covering a vast industrial footprint, and each site poses a high risk of stormwater contamination.

Coverage under the ISGP should be required for all auto repair shops including all facilities engaged in: general auto repair and auto maintenance, auto electrical repair, auto transmission repair, auto glass replacement, tire retreading, auto exhaust repair and top and body repair and paint shops. The permit should also expressly include auto shops engaged in radiator repair and replacement.

Permit coverage is currently required for transportation facilities that conduct “vehicle maintenance” because of the inevitable pollution exposure inherent in vehicle maintenance activities. Wouldn’t auto repair shops, which are engaged in vehicle maintenance as a full-time business, pose an even greater risk of stormwater contamination? Auto repair shops should be covered by this permit unless they can demonstrate that all activities occur indoors and/or are otherwise not exposed to stormwater. Auto Repair Shops (SIC 753x) should be added to Table 1 in S1.A1.

2. S1.D purports to exclude from ISGP coverage facilities discharging certain toxic pollutants. While it certainly seems appropriate to exclude these from coverage so that they can be subject to the scrutiny involved in the development of individual permits that ensure compliance with relevant toxicity water quality criteria, the effectiveness of this exclusion is limited by the lack of monitoring requirements for the identified toxic pollutants. Commenters suggests that all permittees be required to do at least a single round of screening monitoring for these identified toxic pollutants in the first year of permit coverage. This would allow Ecology to determine which ISGP permittees should be instead subject to individual permits to properly control these toxic discharges.

Condition S3

1. S3.A should specify that BMPs identified as necessary must be described in the SWPPP as specifically implemented by the permittee, and that merely cut-and-pasting a general description of a BMP from a manual is inadequate.. Commenters have often reviewed SWPPPs that include only general descriptions of BMPs taken directly from Ecology’s stormwater management manuals without any discussion of where or how these BMPs are implemented at the permittee’s site. This inevitably leads to implementation problems as responsible permittee staff are left without guidance on how the BMPs are intended to work and be maintained, and, often, indicates a lack of adequate care and attention to BMP selection and implementation.

2. Commenters support the deletion of the modifier “in a significant amount” from the S3.B.1.j mapping requirement. “Significant” is a subjective term and the elimination of this modifier makes the permit clearer.

3. S3.B.4.b.i.3, concerning preventive maintenance as a generally required operational source control BMP, is somewhat unclear and internally inconsistent. The chapeau of S3.B.4.b.i.3 states that the SWPPP “shall include the schedule/frequency for completing each [stormwater system] maintenance task.” Commenters support this requirement because without a specific maintenance schedule or frequency identified in the SWPPP it becomes likely that proper maintenance will be deferred. In our experience, inadequate maintenance of stormwater systems, equipment, and BMPs is a common and major cause of stormwater contamination and benchmark exceedances.

The problem is that the proposed new language in S3.B.4.b.i.3.b, concerning this requirement for stormwater drainage/treatment facilities, references maintenance to be done

“in accordance with the Maintenance Standards set forth in the applicable Stormwater Management Manual (SWMM) or other guidance documents or manuals approved in accordance with S3.A.3.c.” Rather than specifying a schedule or frequency for maintenance, these guidance documents or manuals may use other criteria. For instance, the proposed Washington State Marine Terminal AKART and Corrective Action Guidance Manual (Apr. 30, 2014) recites that “[i]nspecting, jetting, and repairing catch basins, manholes, and storm drain lines *on an as needed basis* are required in the SWMMWW.” Marine Term. Draft Man. at B-2 (italics added). The permit should clarify that the SWPPP must always specify a maintenance schedule or frequency even if the manual used by the permittee provides other criteria instead.

4. Commenters support the inclusion of specific reference to catch basin filter inserts as a mandatory BMP to prevent the erosion of soils and other earthen materials in S3.B.4.v.2. In our experience, many permittees fail to use catch basin filter inserts where they are appropriate to filter out solids otherwise carried by stormwater into drainage systems, or assert that their use constitutes an adequate Level 3 response to consistent benchmark exceedances.

Condition S4

1. S4.B proposes to continue the requirement for collection of stormwater grab samples on a quarterly basis. While quarterly monitoring may be appropriate for permittees that usually meet benchmarks due to proper application of BMPs, it is inadequate for many dischargers. Commenters urge that monthly grab sampling be required for some categories of permittees, if not all of them. In particular, more frequent monitoring is important to provide more real-time feedback on the effectiveness of new or changed BMPs implemented in response to benchmark exceedances. Perhaps permittees could be required to do monthly monitoring for one year following the implementation of a Level 2 or 3 response to better evaluate the effectiveness of the response and allow additional adaptive management. Alternatively, or in addition, permittees could be required to commence monthly sampling upon triggering Level 2 to better evaluate pollutant sources, effluent variation, and appropriate corrective actions.

2. S4.B.6 provides for a consistent attainment exception to the benchmark-related monitoring requirements when a permit meets benchmarks in eight consecutive monitoring quarters. Commenters have concerns about allowing permittees to forgo monitoring for as much as three years of the five-year permit term, but accepts this provision as it is consistent with the Pollution Control Hearings Board’s ruling on this exact issue. *Copper Development Ass’n v. Ecology*, PCHB No. 09-135, Findings of Fact, Conclusions of Law, and Order (Apr. 25, 2011). In that decision, the Board reviewed the provision of the 2010 version of the ISGP that allowed a consistent attainment exception after only four consecutive quarters of benchmark attainment. This provision had been highly controversial and was criticized by both permittee and environmental advocate sides. The Board agreed with Soundkeeper that four quarterly samples were insufficient to fairly characterize a stormwater discharge and allow a suspension of monitoring, and mandated a change to better safeguard water quality.

Commenters believe that eight consecutive quarterly samples meeting benchmarks remains an inadequate statistical basis for suspending monitoring, but is able to live with this provision. Commenters insist that it is appropriate for permittees that achieved a consistent attainment monitoring exception under the current permit should restart monitoring to again demonstrate their effluent quality to ensure that changed conditions and practices have not resulted in discharge quality problems since the last monitoring event. A permittee that can again achieve consistent attainment is adequately rewarded for its good performance by being allowed to suspend monitoring for a substantial portion of this coming five-year permit term.

Condition S5

1. Commenters are dismayed that the draft permit proposes to keep visible oil sheen as the benchmark and basis for the monitoring requirement in S5.A, Table 2. In our experience on our visits to ISGP permittees during rainfall or discharges, we have observed a visible sheen in stormwater running into catch basins or out of outfalls at least half the time. We believe that permittees do not properly or fairly report the presence of visible oil sheen because it appears so infrequently on DMRs in comparison to our observations. A PARIS query shows that the approximately 1200 permittees have reported only 29 instances of visible oil sheen in about 20 quarters of monitoring reports under the current permit's visible sheen monitoring requirement. There is no way that this adequately reflects the frequency of visible sheen and the discharged water quality. Indeed, PARIS also shows 44 instances of total petroleum hydrocarbon benchmark exceedances for the fraction of permittees required to monitor for TPH since 2010. This shows that there are at least a number of instances when TPH was over benchmark, but no sheen was reported. Commenters are pleased that the draft permit includes new requirements for actual petroleum hydrocarbon analysis for the air transportation and general transportation permittee sectors, but urges Ecology to require this of all permittees. It is an objective measure that is an appropriate replacement for the subjective visible sheen monitoring that has proven manifestly unreliable.

Another possible improvement to the visible sheen monitoring requirement would be an additional requirement to take and submit digital photographs of the locations monitored for visible sheen. This would improve accountability in monitoring and reporting of this parameter.

2. Footnote a to Table 2, footnote a to Table 3, footnote d to Table 4, and footnote c to Table 5 would allow a permittee to use a method for sample analysis other than the 40 CFR 136-approved methods identified in the table. This is inappropriate and inconsistent with federal regulations. 40 CFR 122.44(i)(1)(iv) and 40 CFR 136.1(b).

Condition S6

1. The crucial definition of "303(d)-listed waterbody," used throughout S6, is unclear. Appendix 2 defines this term as "waterbodies as listed as Category 5 on Washington State's Water Quality Assessment."

Washington State's Water Quality Assessment typically identifies 303(d)-listings by "waterbody segments," corresponding to rectangular areas, corresponding to the section of the township and range containing the relevant sampling station. Recognizing the arbitrariness of this practice and the resulting nonsense of having, for example, only sections of a river containing sampling stations be included on the 303(d) list to the exclusion of sections between those containing sampling locations, Ecology has announced a policy to change this practice to have listings correspond to segmentation indicated by the National Hydrology Dataset rather than the arbitrary grid currently used. WQP Policy 1-11 (July 2012) at 5.

Does Ecology intend to continue to use the obsolete and nonsensical grid-based designation system for ISGP purposes, or to implement its new policy in the ISGP?

2. S6.C and Table 6 omit a numeric benchmark for fecal coliform concentrations in discharges to waterbodies that are bacteria-impaired. Commenters urge the inclusion of fecal coliform numeric benchmarks here. The monitoring/benchmark/adaptive management scheme lies at the heart of the ISGP, and there is no reason that it cannot or should not be used for discharges to waters 303(d)-listed for fecal coliform. While the 2012 amendment to RCW 90.48.555 prohibited numeric effluent limitations for fecal coliform, it leaves open the possibility of numeric benchmarks. There is no basis to believe that implementation of the mandatory fecal coliform BMPs (at footnote j to Table 6), which are mostly identical to the standard BMPs required of all permittees, provide assurance that fecal coliform discharges will not cause or contribute to fecal coliform water criteria violations in waters already 303(d)-listed for fecal coliform. Just as they are needed to ensure that authorized discharges do not cause or contribute to in-stream violations of copper or turbidity criteria, numeric benchmarks for fecal coliform are necessary for this subset of permittees.

In addition, item 5 of footnote j, which requires permittees discharging to fecal coliform 303(d)-listed waters to include a mandatory BMP in SWPPPs and "conduct additional bacteria-related sampling and/or BMPs, if ordered by Ecology on a case-by-case basis," is an illegal permit condition. A condition such as this, requiring that a permittee "do what Ecology later tells you to do" is both inadequate to ensure compliance with water quality standards and contrary to the requirements of WAC Ch. 173-226 essentially mandating that a general permit spell out the necessary conditions. WAC 173-226-070(2) (water quality-based effluent limitations must be incorporated into general permits when necessary); -070(6) (general permit must specify effluent limitations); WAC 173-226-080(1)(a) (discharges must be consistent with the "terms and conditions of the permit"); *see also* WAC 173-201A-510(1) and (3)(d). Ecology should eliminate this requirement and replace it with numeric benchmarks and Level 1, 2, and 3 requirements.

3. What is the basis for the 30 mg/L total suspended solids effluent limit for discharges to sediment cleanup sites or waters with sediment 303(d)-listings? Why is not this limit 10 or even 5 mg/L?

The concern here is proper implementation of source control to ensure that discharges do not cause or contribute to violations of sediment management standards. The sediment management standards provide a process for evaluation of a discharge's potential to cause or

contribute to such violations. WAC 173-204 Part IV. Has Ecology considered the reasonable potential characterization factors identified at WAC 173-204-400(6) for ISGP-authorized discharges? What is the basis for Ecology's determination that no ISGP permittee need apply for a sediment impact zone?

4. Footnote e to Table 6 refers to S6.C.1.c and so appears to be mistaken. There is no S6.C.1.c.

5. Commenters generally support the addition of specific protections where the discharge is to one of the designated Puget Sound Sediment Cleanup Sites. Analysis of storm drain solids is important to identify sources of toxic pollutant discharges, and removal of these solids is a prudent, common-sense requirement. To allow merely removal of these solids without analytical characterization would mean that ongoing sources of toxic storm drain and stormwater discharges will go undetected to the detriment of water quality.

However, Commenters have a concern with the new draft S6.C.2. The deadline for storm drain cleaning and solids analysis is rather far off. Why are the high-risk permittees at issue not required to do this work by a date earlier than October 1, 2017? If the permit is effective on January 1, 2015, this date is more than halfway through the five-year permit term. The draft language includes a provision for a waiver of this requirement, which could be used to provide relief for particular permittees of whom it would not be reasonable to require the cleaning and analysis within a more generally reasonable, tighter timeframe. Commenters propose that the deadline for this work be set at June 30, 2016.

Commenters are concerned that the storm drain cleaning and solids analysis requirement is limited to "storm drain lines (including inlets, catch basins, sumps, conveyances lines [sic], and oil/water separators) *owned or controlled by the permittee.*" (Italics added.) Many of the largest permittee facilities presenting the most significant water quality risks are tenants, including cargo terminal operator lessors of Port property, may attempt to avoid this requirement by asserting that they do not own or control the storm drain lines and facilities. Commenters do not believe that ownership interest is an appropriate basis to limit the application of this important provision. Ecology should impose the requirement on all qualifying permittees regardless of ownership status, making tenant permittees responsible for negotiating with their landlords arrangements that will result in permit compliance and appropriate safeguards for water quality.

Commenters are also concerned about the lack of standards for waivers from storm drain system solids sampling and analysis and cleaning requirements. No waivers to the cleaning requirement should be available unless a permittee can show to Ecology's satisfaction that cleaning is not necessary to prevent stormwater contamination, and the ISGP should set forth this criteria. No waivers to the sampling and analysis requirements should be available because sampling and analysis are the only objective means to determine that there is no risk of stormwater contamination. A cleaning requirement waiver request should be based on the results of the sampling analysis results.

6. S6.D.5 allows discharges under the ISGP to waters with approved TMDLs that establish no ISGP-designated wasteload allocation, but that do not exclude ISGP discharges. This appears to conflict with the requirement that water quality-based effluent limitations be “consistent with the assumptions and requirements of any available wasteload allocation for the discharge” in an approved TMDL. 40 CFR 122.44(d)(1)(vii)(B). If an approved TMDL provides no wasteload allocation for ISGP discharges and does not consider them in its specification of allowable daily loads, an ISGP permittee’s additional loading of a pollutant of concern to an impaired waterbody is generally not allowed. These discharges should be prohibited unless and until the TMDL is amended to account for them.

Condition S7

S7.C.1 should specify that inspection records or reports must be kept as part of the SWPPP, which is subject to the S9.F provision for public inspection of SWPPPs. S3.B.4.b.i.6 (p. 21) requires the inspection certifications of compliance to be included in the SWPPP. S7.C.1’s omission of the SWPPP inclusion requirement is an internal inconsistency that has resulted in the unavailability of inspection reports and certifications to members of the public who have sought public review of permittees’ SWPPPs.

Condition S8

Commenters urge Ecology to tighten the language concerning Level 3 corrective action requirements. The validity of the ISGP’s benchmark/corrective action adaptive management scheme depends on a firm requirement that permittees implement BMP improvements to meet benchmarks. Otherwise, the scheme fails as a water quality-based effluent limitation because it does not assure that discharges are of sufficient quality to avoid instream violations of water quality standards. Commenters have commonly seen manifestly inadequate level 3 responses that result from the current loose language for level 3 that would be retained in the draft ISGP. A basic requirement of level 3, as given in S8.D.1, is for the permittee to revise the SWPPP with additional treatment BMPs, “with the goal of achieving the applicable benchmark value(s) in future discharges.” This is a very weakly-stated goal because it allows an argument that it does not require that the additional treatment BMPs be designed or expected to consistently meet benchmarks upon installation. Instead, this formulation leaves room for argument about the adequacy of a level 3 response that is a mere step toward the announced goal and meeting benchmarks at some unspecified future time, as opposed to a response that is reasonably expected to result in benchmark attainment upon implementation.

In many circumstances, this weak wording is unimportant because of the S8.D.3.a engineering report requirement for a licensed engineer to specify the expected discharge characteristics and the justification for a reasonable expectation that the treatment will meet benchmarks. The problem is that the S8.D.3. engineering report requirement is waived when the selected level 3 treatment BMPs does not “require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater.” In other words, when a permittee chooses a “plug and play” treatment BMP, such as catch basin or roof downspout filters, for level 3, it need not produce any engineering

report and there is no engineer's certification on a reasonable expectation that benchmarks will be met as a result of implementation. In this circumstance, the permittee may assert that it need only implement the "plug and play" treatment "with the goal of achieving the applicable benchmark in future discharges." There is no provision for Ecology to review or approve the use of such off-the-shelf treatment BMPs in lieu of an engineered solution. This represents a significant loophole for many dischargers who use it to subvert the adaptive management structure of the permit.

To remedy this problem, Commenters suggest that all level 3 responses involve at least submission of a certified justification by an engineer or qualified stormwater management professional for the expectation that the additional treatment BMPs will result in benchmark attainment. Requiring this certified justification would ensure the involvement of a qualified specialist in all level 3 corrective actions and prevent permittees from short-changing their level 3 obligations without Ecology review.

In addition, Commenters urge that catch basin and roof downspout filtration be considered level 2 structural source control BMPs, or included in a new "pre-treatment BMPs" definition, and excluded from level 3. The use of catch basin and downspout filters is a basic BMP that is identified as "applicable" in the SWMMWW for many ISGP permittees. This type of easily installed filtration should be implemented by and required of permittees before they reach three benchmark exceedences in a single year (the level 3 trigger).

Thank you for your work on the ISGP and your consideration of these comments.

Sincerely,

SMITH & LONEY, PLLC

By: s/Richard A. Smith
Richard A. Smith